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Attorney for Petitioner
BLANCA OLIVAS

FILED
2008 SEP -2 PM 2:12
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 1599 BTM BLM

IN RE PETITION OF BLANCA OLIVAS RELEASE OF SEIZED 1999 VOLKSWAGEN PASSAT, CALIFORNIA LICENSE 4LIH673.

BLANCA OLIVAS,

Petitioner.

Case No.

PETITION OF BLANCA OLIVAS FOR RELEASE OF SEIZED VEHICLE

The Petitioner, BLANCA OLIVAS, by and through her counsel, and pursuant to Title 18, United States Code, Section 983(f)(3)(A), hereby petitions this Court for the release of her 1999 Volkswagen Passat during the pendency of administrative and/or judicial forfeiture proceedings.

STATEMENT OF THE CASE

On August 9, 2008, petitioner's vehicle was seized from her home in Fallbrook, California. On August 14, 2008, petitioner filed her Seized Asset Claim Form (see exhibit "A" attached hereto) and administrative Hardship Petition with U.S. Customs and Border Protection.

As of the date of this filing, no response has been received from U.S. Customs and Border Protection to Mrs. Olivas' administrative petition. This petition follows.

STATEMENT OF THE LAW

On August 23, 2002, the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) went into effect. One of the main elements of the statute provides for the what is often referred to as a Hardship Release, a provision for the release of property during the pendency of the forfeiture proceedings. The 'release' provisions are found in Title 18, United States Code, Section 983(f), which provides as follows:

> **(f) RELEASE OF SEIZED PROPERTY**
>
> **(1)** A claimant under subsection (a) is entitled to immediate release of seized property if -
>
> **(A)** the claimant has a possessory interest in the property;
>
> **(B)** the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;
>
> **(C)** the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;
>
> **(D)** the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and
>
> **(E)** none of the conditions set forth in paragraph (8) applies.

In her petition to U.S. Customs and Border Protection, Mrs. Olivas met all of the above requirements. She set forth and documented she is the registered owner of the vehicle. [18 U.S.C. § 981(f)(1)(A)] (See Exhibit "B"). She further established her community ties by explaining she is a United States citizen and has been a resident of San Diego County all her life. [18 U.S.C. § 981(f)(1)(B)]. She also explained the continued possession by the government pending final disposition of forfeiture proceedings will cause substantial hardship to her for the following reasons. She lives in Oceanside, California but works at American Rim Supply in Carlsbad, California. It would take approximately one and a half to two hours for her to travel by bus each way to and from work. In connection to her work she needs to drive to the sister facility in Vista, California, which she is obviously not able to do without her vehicle. Additionally, she picks up her nephew twice a week at daycare in Carlsbad which she is also unable to do. Finally, she just had cancer surgery on March 16, 2008, for thyroid cancer. She is a recovering patient and needs aftercare treatment following her radiation treatment that she received in connection with her treatment In addition, she needs her vehicle for the normal necessities of life such as going to medical appointments, the grocery store, etc. [18 U.S.C. § 981(f)(1)(C)]. Finally, she demonstrated that likely hardship from the continued possession by the Government of the vehicle outweighs the risk the vehicle will be destroyed, damaged, lost or transferred if it is returned to her during the pendency of the proceedings. Insurance has always been maintained on the vehicle and will continue to be maintained should the vehicle be released. (See Exhibit "B" attached) . [18 U.S.C. § 981(f)(1)(D)]. Nevertheless, U.S. Customs and Border Protection has failed to even respond to her Petition.

In spite of Mrs. Olivas clearly demonstrated hardship arising from the seizure of the vehicle, U.S. Customs and Border Protection has failed to release the vehicle. Congress has provided a remedy for such inaction. Title 18, United States Code, Section 983(f)(3)(A) provides:

> If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

18 U.S.C. Section 983(f)(5) further provides:

> The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

18 U.S.C. Section (f)(6) goes on to require the following:

> If -
>
> **(A)** a petition is filed under paragraph (3); and
>
> **(B)** the claimant demonstrates that the requirements of paragraph (1) have been met, the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property. (emphasis added).

Mrs. Olivas has met all of the above requirements. She has filed the petition under 18 U.S.C. Sections 983(f)(1) and (2), she had demonstrated that the requirements of paragraph (f)(1) have been met. Under these circumstances the statute calls for the court ordered release of the vehicle to her during the pendency of the forfeiture proceedings.

If the court grants this petition, the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including (1) permitting the inspection, photographing, and inventory of the property; (2) fixing a bond in accordance with Rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and (3) requiring the claimant to obtain or maintain insurance on the subject property. While it is petitioner's contention no bond is necessary in this case, she has no objection to permitting the inspection, photographing and inventory of the vehicle, nor requiring him to continue maintain insurance on the vehicle.

CONCLUSION

Mrs. Olivas needs her vehicle so she can drive to, and use her vehicle at work, doctor appointments, and the ordinary necessities of life. The U.S. Customs and Border Protection refusal to even rule on her administrative Hardship Petition flies in the face of the intention of the statute, which was to provide redress for those with hardships. She has clearly demonstrated a need for the return of the vehicle.

For the foregoing reasons, it is respectfully submitted this court should order the release of Mrs. Olivas' vehicle to her during the pendency of administrative and/or judicial forfeiture proceedings.

Dated: September 2, 2008

Respectfully submitted,

RICHARD M. BARNETT

Attorney for Petitioner
BLANCA OLIVAS

PROOF OF SERVICE

I, LILIANA SOLORIO, do hereby state:

That I am a citizen of the United States, over the age of eighteen years, and not a party to the within action.

That my work address is 105 West F Street, 4th Floor, San Diego, California.

That on September 2, 2008, I deposited in the United States Mail, in San Diego, California, in the above-entitled action, in an envelope bearing the requisite postage: Petition of Blanca Olivas for Release of Seized Vehicle to the office of the following individuals:

Mary Lundberg
Assistant U.S. Attorney
Office of the U.S. Attorney
880 Front Street
San Diego, CA 92188

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of September, 2008, at San Diego, California.

LILIANA SOLORIO

JS-44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

FILED

2008 SEP -2 PM 2:12

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY ______ DEPUTY

I (a) PLAINTIFFS

Blanca Olivas

DEFENDANTS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Richard M. Barnett
105 West F Street, 4th Floor
San Diego, CA 92101
(619) 231-1182

ATTORNEYS (IF KNOWN)

'08 CV 1599 BTM BLM

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ■ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State		☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Petition for Release of Seized Vehicle (18 U.S.C. Section 983(f)(3)(A)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury- Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prisoner Conditions

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ■ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ■ 1 Original Proceeding
- ☐ 2 Removal from State Court
- ☐ 3 Remanded from Appelate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 — DEMAND $ — Check YES only if demanded in complaint: JURY DEMAND: ☐ YES ■ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE ______ Docket Number ______

DATE 9-2-08 SIGNATURE OF ATTORNEY OF RECORD

154605 TAC $350

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

154605 - TC

September 02, 2008
14:15:26

Civ Fil Non-Pris
USAO #.: 08CV1599
Judge..: BARRY T MOSKOWITZ
Amount.: $350.00 CK
Check#.: BC0353

Total-> $350.00

FROM: BLANCA OLIVAS
VS
USA